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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,857	02/02/1999	VLADIMIR POGREBINSKY	P-2163-US	9235
21884	7590	02/17/2005	EXAMINER	
WELSH & FLAXMAN LLC 2450 CRYSTAL DRIVE SUITE 112 ARLINGTON, VA 22202			VANDERPUYE, KENNETH N	
			ART UNIT	PAPER NUMBER
			2661	13
DATE MAILED: 02/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.



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EITAN, PEARL, LATZER & COHEN ZEDEK LLP 10 ROCKEFELLER PLAZA, SUITE 1001 NEW YORK, NY 10020			VANDERPUYE, KENNETH N	
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Office Action Summary	Application No.	Applicant(s)
	09/241,857	POGREBINSKY, VLADIMIR
Examiner	Art Unit	
Kenneth N Vanderpuye	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4,6 and 8-38 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) Claim(s) 1-4,6 and 8-35 is/are allowed.

6) Claim(s) 36 is/are rejected.

7) Claim(s) 37-38 is/are objected to.

8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on ____ is: a) approved b) disapproved by the Examiner.

 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. ____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.

6) Other: ____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khansari et al.(6,141,448) in view of Wildfeuer(6,298,055)

With regards to claim 36, Khansari teaches a method comprising the steps of:

monitoring said network available bandwidth and detecting said available bandwidth(col.

2 lines 12-15, examples of network status are congestion and available bandwidth); establishing a bit rate for transmission in accordance with the detected available bandwidth(col. 2 lines 7-12, coders adjust rate based on network status). Khansari is silent as to the packaging media frames(payload) and protocol parameters(control data in header) in accordance with the bit rate.

However these features are inherently taught for the following reasons: (1) the video stream in Khansari is packet-based hence the source must have the capability of packetizing the video stream hence there is a packetizer in Khansari, (2) since the class of encoders modify the transmission rate it must directly impact the rate at which video packets are formed and transmitted if the rate is to be achieved, hence the packaging of media at the adjusted rate is inherently taught . Wildfeuer teaches an encoder and a packetizer for packetizing voice samples.

Art Unit: 2661

It would have been obvious to one of ordinary skill in the art to combine the packetizer in Wildfeuer with the real-adaptive encoders in Khansari for the purpose of implementing rate adaptive encoding over a packet network. The motivation being to packetize video data prior to transmission.

Allowable Subject Matter

3. Claims 1-4, 6, 8-35 are allowed.
4. Claims 37-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Vanderpuye whose telephone number is (703) 308-7828. The examiner can normally be reached on M-F from 6:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms, can be reached on (703) -305-4703. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.



KENNETH VANDERPUYE
PRIMARY EXAMINER

Kenneth Vanderpuye

February 22, 2004